

21 C.J.S. Courts § 87

Corpus Juris Secundum | May 2023 Update

Courts

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II. Jurisdiction of Courts

G. Discretion of Court to Exercise or Decline Jurisdiction

2. Forum Non Conveniens as Basis for Declining Exercise of Jurisdiction

§ 87. Procedure for court's consideration of forum non conveniens

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  40.11(1) to 40.11(9)

The defendant bears the burden as the moving party under the doctrine of forum non conveniens, and must comply with applicable procedures in doing so, but some jurisdictions permit a court to apply the doctrine on its own motion and act sua sponte; conditions may be imposed when granting the motion.

Forum non conveniens, as a basis for a court declining the exercise of jurisdiction,¹ requires an exercise of discretion by the forum court,² subject to review for abuse of discretion.³

The moving party defendant has the burden to establish the grounds⁴ and must demonstrate with particularity that the applicable factors, as a whole or separately, support dismissal in favor of the alternative forum.⁵ The defendant's burden is to establish that the plaintiff's choice of forum is demonstrably inappropriate.⁶ However, in some jurisdictions, if neither party is a resident of the forum jurisdiction, the burden shifts to the plaintiff to justify bringing the action in that forum.⁷

The motion calls for a case-by-case examination of the parties, the dispute, and the relationship to the forum state,⁸ taking into consideration all the pertinent factors.⁹

The procedure on the motion, as a motion to dismiss or stay, is generally one governed by local statutes or court rules,¹⁰ including timely filing requirements.¹¹

The court may take up the motion as a threshold matter, prior to considering any other matter,¹² addressing the question preliminarily before issues of subject matter jurisdiction and personal jurisdiction are addressed.¹³ When personal jurisdiction is difficult to determine, and forum non conveniens considerations weigh heavily in favor of dismissal, a court may properly dismiss a complaint for forum non conveniens without first deciding whether it has personal jurisdiction over the defendant.¹⁴ In contrast, other authority requires the court to first determine the existence of proper jurisdiction and venue.¹⁵

The state courts disagree as to whether a court may make a forum non conveniens ruling sua sponte, some permitting the action,¹⁶ while others provide that the motion cannot be raised by the court on its own motion, sua sponte.¹⁷

In ruling on the motion, the court must state the basis of its decision when so provided by statute, rule,¹⁸ or practice.¹⁹

Terms and conditions on dismissal.

The court may impose reasonable conditions on the dismissal to insure that the plaintiff is not left without a forum.²⁰ The terms and conditions for a dismissal or stay of an action for forum non conveniens reasons are to be as the interests of justice require, with due regard to the rights of the parties to the action.²¹ A condition of dismissal may include a stipulation that the defendants waive any statute of limitations defense in the alternate forum.²²

CUMULATIVE SUPPLEMENT

Cases:

Where a trial court's written order dismissing a motion to dismiss on forum non conveniens grounds fails to set forth any meaningful analysis addressing each of the required factors, the hearing transcript on the motion must reflect that the trial court engaged in an adequate analysis of the factors during the hearing itself. [Fla. R. Civ. P. 1.061](#). [Tome v. Herrera-Zenil](#), 273 So. 3d 140 (Fla. 3d DCA 2019).

Discretion afforded trial court in ruling on forum non conveniens motion is considerable; as result, an appellate court will reverse trial court's decision only if defendants have shown that trial court abused its discretion in balancing relevant factors. [Malloy v. DuPage Gynecology, S.C.](#), 2021 IL App (1st) 192102, 456 Ill. Dec. 202, 193 N.E.3d 170 (App. Ct. 1st Dist. 2021), appeal denied, 452 Ill. Dec. 2, 184 N.E.3d 983 (Ill. 2022).

Generally, decision to grant or deny motion to dismiss on forum non conveniens grounds is addressed to court's discretion, and if courts below considered the various relevant factors in making such determination, there has been no abuse of discretion reviewable by the Court of Appeals, even if the Court of Appeals would have weighed those factors differently. [N.Y. CPLR § 327\(a\)](#). [Estate of Kainer v. UBS AG](#), 37 N.Y.3d 460, 160 N.Y.S.3d 182, 181 N.E.3d 537 (2021).

At each stage of the forum non conveniens inquiry, the burden remains with the moving party to establish those underlying facts necessary for the court to decide the appropriateness of a stay or dismissal, and a court considering a defendant's motion to dismiss for forum non conveniens must accept as true all well-pleaded facts alleged in the plaintiff's complaint, and give the plaintiff, as the non-moving party, the benefit of all favorable inferences that might be drawn from those facts. [Espinoza v. Evergreen Helicopters, Inc.](#), 359 Or. 63, 376 P.3d 960 (2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 82.
- 2 U.S.—*Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007).

Cal.—*Aghaian v. Minassian*, 234 Cal. App. 4th 427, 183 Cal. Rptr. 3d 822 (2d Dist. 2015), review denied, (May 13, 2015).

D.C.—*Garcia v. AA Roofing Co., LLC*, 125 A.3d 1111 (D.C. 2015).

N.Y.—*Koop v. Guskind*, 116 A.D.3d 672, 984 N.Y.S.2d 68 (2d Dep't 2014).

Tex.—*Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company*, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).- 3 N.Y.—*Koop v. Guskind*, 116 A.D.3d 672, 984 N.Y.S.2d 68 (2d Dep't 2014).

Tex.—*Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company*, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).

Untenable legal conclusion is abuse
Wash.—*Lisby v. PACCAR, Inc.*, 178 Wash. App. 516, 316 P.3d 1097 (Div. 1 2013).

Improvident exercise of discretion to dismiss
N.Y.—*Huani v. Donziger*, 129 A.D.3d 523, 11 N.Y.S.3d 153 (1st Dep't 2015).- 4 Cal.—*National Football League v. Fireman's Fund Insurance Company*, 216 Cal. App. 4th 902, 157 Cal. Rptr. 3d 318 (2d Dist. 2013).

D.C.—*Garcia v. AA Roofing Co., LLC*, 125 A.3d 1111 (D.C. 2015).

Del.—*Martinez v. E.I. DuPont De Nemours and Co., Inc.*, 82 A.3d 1 (Del. Super. Ct. 2012), judgment aff'd, 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

Fla.—*Abeid-Saba v. Carnival Corp.*, 184 So. 3d 593 (Fla. 3d DCA 2016).

N.J.—*Yousef v. General Dynamics Corp.*, 205 N.J. 543, 16 A.3d 1040 (2011).

N.Y.—*Thor Gallery at South DeKalb, LLC v. Reliance Mediaworks (USA) Inc.*, 131 A.D.3d 431, 15 N.Y.S.3d 766 (1st Dep't 2015).

Tex.—*Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company*, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).- 5 Del.—*Martinez v. E.I. DuPont De Nemours and Co., Inc.*, 82 A.3d 1 (Del. Super. Ct. 2012), judgment aff'd, 86 A.3d 1102 (Del. 2014), as revised, (Mar. 4, 2014).

Must prove elements
Fla.—*Abeid-Saba v. Carnival Corp.*, 184 So. 3d 593 (Fla. 3d DCA 2016).

Ga.—*Collier v. Wehmeier*, 313 Ga. App. 421, 721 S.E.2d 919 (2011).

Tex.—*Okonkwo v. Okonkwo*, 365 S.W.3d 801 (Tex. App. San Antonio 2012).

- 6 N.J.—Yousef v. General Dynamics Corp., 205 N.J. 543, 16 A.3d 1040 (2011).
- 7 D.C.—Garcia v. AA Roofing Co., LLC, 125 A.3d 1111 (D.C. 2015).
- 8 Cal.—National Football League v. Fireman's Fund Insurance Company, 216 Cal. App. 4th 902, 157 Cal. Rptr. 3d 318 (2d Dist. 2013).
- 9 §§ 83 to 86.
- 10 Cal.—Richtek USA, Inc. v. uPI Semiconductor Corporation, 242 Cal. App. 4th 651, 195 Cal. Rptr. 3d 430 (6th Dist. 2015).

Tex.—Sheldon v. Pinto Technology Ventures, L.P., 477 S.W.3d 411 (Tex. App. Houston 14th Dist. 2015), petition for review filed, (Jan. 4, 2016).

W. Va.—State ex rel. Ford Motor Co. v. Nibert, 235 W. Va. 235, 773 S.E.2d 1 (2015).
- 11 Fla.—S2 Global, Inc. v. Tactical Operational Support Services, LLC, 119 So. 3d 1280 (Fla. 4th DCA 2013).

Tex.—In re BPZ Resources, Inc., 359 S.W.3d 866 (Tex. App. Houston 14th Dist. 2012).

W. Va.—State ex rel. J.C. ex rel. Michelle C. v. Mazzone, 235 W. Va. 151, 772 S.E.2d 336 (2015).
- 12 La.—Brumley v. Akzona, Inc., 45 So. 3d 1115 (La. Ct. App. 4th Cir. 2010).
- 13 Tex.—Vinmar Trade Finance, Ltd. v. Utility Trailers de Mexico, S.A. de C.V., 336 S.W.3d 664 (Tex. App. Houston 1st Dist. 2010).
- 14 Nev.—Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 131 Nev. Adv. Op. No. 35 (Nev. 2015).
- 15 R.I.—Kedy v. A.W. Chesterton Co., 946 A.2d 1171 (R.I. 2008).
- 16 N.D.—Vicknair v. Phelps Dodge Industries, Inc., 2009 ND 113, 767 N.W.2d 171 (N.D. 2009), as corrected, (July 21, 2009).

Tex.—Dickerson v. Doyle, 170 S.W.3d 713 (Tex. App. El Paso 2005).
- 17 Fla.—Fihe v. Rexall Sundown, Inc., 966 So. 2d 415 (Fla. 4th DCA 2007).

N.Y.—Mashreqbank PSC v. Ahmed Hamad Al Gosaibi & Bros. Co., 23 N.Y.3d 129, 989 N.Y.S.2d 458, 12 N.E.3d 456 (2014).
- 18 Ind.—DePuy Orthopaedics, Inc. v. Brown, 29 N.E.3d 729 (Ind. 2015).

W. Va.—State ex rel. J.C. ex rel. Michelle C. v. Mazzone, 235 W. Va. 151, 772 S.E.2d 336 (2015).
- 19 Ga.—Wang v. Liu, 292 Ga. 568, 740 S.E.2d 136 (2013).

Ill.—Landmark American Ins. Co. v. NIP Group, Inc., 2011 IL App (1st) 101155, 356 Ill. Dec. 877, 962 N.E.2d 562 (App. Ct. 1st Dist. 2011).
- 20 Nev.—Provincial Gov't of Marinduque v. Placer Dome, Inc., 350 P.3d 392, 131 Nev. Adv. Op. No. 35 (Nev. 2015).

Wash.—Lisby v. PACCAR, Inc., 178 Wash. App. 516, 316 P.3d 1097 (Div. 1 2013).
- 21 Tex.—Ford Motor Co. v. Villanueva, 302 S.W.3d 476 (Tex. App. Eastland 2009).

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Cal.—Hahn v. Diaz-Barba, 194 Cal. App. 4th 1177, 125 Cal. Rptr. 3d 242 (4th Dist. 2011).

Fla.—Publicidad Vepaco, C.A. v. Mezerhane, 176 So. 3d 273 (Fla. 3d DCA 2015), review denied, 2016 WL 1317676 (Fla. 2016).

Miss.—Alston v. Pope, 112 So. 3d 422 (Miss. 2013).

Tex.—In re Mantle Oil & Gas, LLC, 426 S.W.3d 182 (Tex. App. Houston 1st Dist. 2012).

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